

# United States Bankruptcy Court

For the NORTHERN District of IOWA

VERLE ALLEN FISH and  
VIRGINIA HOPE FISH,

Debtor.

EITZEN STATE BANK,

v.

VERLE ALLEN FISH and  
VIRGINIA HOPE FISH,

Plaintiff

Defendant

Case No. I-90-01285D

Adversary Proceeding No. I-90-0225D

FILED  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF IOWA

DEC 23 1991

BARBARA A. EVERLY, CLERK

## JUDGMENT

- ☒ This proceeding having come on for trial or hearing before the court, the Honorable  
**MICHAEL J. MELLOY**, United States Bankruptcy Judge, presiding, and  
the issues having been duly tried or heard and a decision having been rendered.

(OR)

- ☐ The issues of this proceeding having been duly considered by the Honorable  
**MICHAEL J. MELLOY**, United States Bankruptcy Judge, and a decision  
having been reached without trial or hearing.

IT IS ORDERED AND ADJUDGED: that the plaintiff is awarded sanctions against the  
defendants, Verle Allen Fish and Virginia Hope Fish, in the sum of \$810.72.



**BARBARA A. EVERLY**

Clerk of Bankruptcy Court

[Seal of the U.S. Bankruptcy Court]

Date of issuance: December 23, 1991.

By: Theresa M. Kula

Deputy Clerk

VOL III  
PG 77

DEC 23 1991

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF IOWA

BARBARA A. EVERLY, CLERK

IN RE:

Chapter 7  
BANKRUPTCY NO.

VERLE ALLEN FISH and  
VIRGINIA HOPE FISH,

L-90-01285D

Debtors.

-----  
EITZEN STATE BANK,

ADVERSARY NO.

Plaintiff,

L-90-0225D

v.

VERLE ALLEN FISH and  
VIRGINIA HOPE FISH,

Defendant.

**ORDER RE: MOTION FOR SANCTIONS AND  
MOTION TO COMPEL DISCOVERY**

The motion of the plaintiff, Eitzen State Bank, for sanctions and to compel discovery came on for telephonic hearing on December 20, 1991. The Court, having reviewed the file and having considered the arguments of counsel, enters the following orders.

A review of the court file shows that the plaintiff has filed two requests for production of documents. While the defendant has produced a number of documents, there are still many documents which are the subject of the request for production of documents which have either not been produced or the inability to produce the documents explained. On August 23, 1991, the Court held a hearing at which time an order was entered indicating that all of the documents were to be produced within 20 days or an affidavit was to be filed explaining the inability to produce the documents.

The court file and statements of counsel show that many of the documents which were the subject of the motion to compel were not produced and no affidavit was filed explaining the inability to produce the documents. Specifically, financial statements relating to indebtedness owed to ITT Financial Corporation has not been produced, in spite of the fact, that request has been pending for many months. Additionally, no affidavit has been filed explaining the inability to produce those financial statements.

There has been extensive discussion and correspondence back and forth between the attorneys about the possibility of the debtors signing a release which would allow the plaintiff to obtain the documents directly from parties such as ITT, Waukon State Bank, etc. However, there has been controversy over the form and scope of the release. A form of release has now been agreed upon and sent to the defendants for signature, however, as of the date of the hearing, that release still had not been signed and delivered to the plaintiff's attorney.

In summary, the Court finds that the defendants have failed to comply with legitimate discovery requests and have failed to comply with this Court's order of August 23, 1991, compelling discovery. The Court finds that this is an appropriate case to enter a further order compelling discovery and also an appropriate case for imposition of sanctions pursuant to Fed.R.Bankr.P. 7037. The plaintiff shall be allowed its reasonable attorney's fees and expenses as incurred in connection with the plaintiff's attempts to obtain discovery from the defendants. The Court will allow the

amount set forth in the affidavit submitted by plaintiff's attorney for the second motion to compel. The Court is not inclined to allow expenses for the first motion. The total fees and expenses for the second motion are \$810.72 which the Court finds to be reasonable. Judgement shall enter accordingly in favor of the plaintiff and against the defendants for that amount as a sanction for failure to comply with discovery.

The Court will also enter an appropriate order compelling further discovery as requested by the plaintiff. An order shall also enter extending the discovery deadline to February 28, 1992. This Court has advised and admonished the parties that no further extensions of discovery will be granted. If the parties are unable to complete discovery within the time limit due to the continued failure of the defendants to cooperate with discovery, the imposition of further more severe sanctions will be considered. The defendants should be aware of the fact that if they do not cooperate with discovery and comply with this Court's order, it is very possible an entry of default may enter.

IT IS THEREFORE ORDERED that the discovery deadline is extended to February 28, 1992.

IT IS FURTHER ORDERED that the plaintiff is awarded sanctions against the defendants, Verle Allen Fish and Virginia Hope Fish, in the sum of \$810.72. Judgment shall enter accordingly for that amount.

IT IS FURTHER ORDERED that in connection with the second motion to compel production the Court makes the following specific order concerning the items set forth in paragraph 5 of the motion filed December 13, 1991.

a. Within 15 days from the date of this order, the defendants shall either produce the documents referred to in paragraph 5(a) or deliver to plaintiff's attorney a signed release authorizing the plaintiff's attorney to obtain the information directly from ITT.

b. Within 15 days from the date of this order, the defendants shall either produce the documents regarding debts owing to the Waukon State Bank, the State Bank of LaCrosse and Gundersen Clinic, LTD., or deliver to plaintiff's attorney a signed release authorizing the plaintiff's attorney to obtain that information directly from those creditors.

c. Within 20 days from the date of this order, the defendant shall produce all documents showing what accounts receivable were in existence at any time during the month of July, 1990, the collection or disposition of those accounts receivable, and the disposition of the proceeds of those accounts receivable. In addition, the defendants shall submit together with the documents, an affidavit that indicates whether the documents being produced are all of the documents relating to accounts receivable. To the extent that there is any documentation concerning accounts receivable which is not being produced to the plaintiff, the defendants shall explain what documents are not being produced and

the defendants' inability to produce the documents.

d. Within 15 days from the date of this order, the defendant shall either produce the Waukon State Bank deposit slips or deliver to plaintiff's attorney a signed release authorizing the plaintiff's attorney to obtain those documents directly from the Waukon State Bank.

e. Within 20 days from the date of this order, the defendants shall produce all records regarding work done for Mr. Rommes and Duane Kuehner. In addition, the defendants shall deliver an affidavit to the plaintiff stating whether the documents produced represent all of the records relating to work done for those two individuals. To the extent the affidavit indicates that there are other records which are not being produced, the defendants shall explain the nature and extent of those records and their inability to produce those records to the plaintiff.

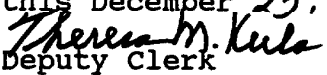
f. Within 20 days from the date of this order, the defendants shall identify and produce the letter which is referred to in paragraph 5(f) of the motion for sanctions and to compel discovery filed December 13, 1991.

g. Within 20 days from the date of this order, the defendant shall produce all records of work done or jobs completed as requested by the plaintiff. In addition, the defendants shall furnish an affidavit indicating whether the records produced are all of the records relating to work done or jobs completed. To the extent the defendants indicate that not all records are being

defendants shall identify the records not produced and explain their inability to produce all of the records.

DONE AND ORDERED this 23<sup>rd</sup> day of December, 1991.

  
MICHAEL J. MELLODY  
Chief Bankruptcy Judge

Copies to: (w/judgment)  
Jeffrey L. Swartz,  
Atty for Plaintiff;  
Michael C. Dunbar,  
Atty for Defendants;  
Defendants;  
U.S. Trustee;  
this December 23, 1991  
  
Deputy Clerk  
P.O. Box 74890  
Cedar Rapids, Iowa 52407

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF IOWA

IN RE:

VERLE ALLEN FISH and  
VIRGINIA HOPE FISH,

Debtors.

EITZEN STATE BANK,

Plaintiff,

vs.

VERLE ALLEN FISH and  
VIRGINIA HOPE FISH,

Defendants.

Chapter 7

Bankruptcy No. L-90-01285D

FILED  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF IOWA

NOV 12 1992

Adversary No. L-90-0225D  
BARBARA A. EVERLY, CLERK

SATISFACTION OF JUDGMENT

COMES NOW the Plaintiff herein Eitzen State Bank through its undersigned attorneys and does hereby duly acknowledges of record satisfaction of its judgment rendered on December 23, 1991, against the Defendants/Debtors.

Dated this 10th day of November, 1992.

JACOBSON, BRISTOL, GARRETT & SWARTZ

BY:

*Jeffrey L. Swartz*  
Jeffrey L. Swartz #9022  
25 First Ave. N.W., P.O. Box 49  
Waukon, IA 52172  
Telephone: (319) 568-3439

ATTORNEYS FOR EITZEN STATE BANK

STATE OF IOWA )  
 ) ss  
ALLAMAKEE COUNTY )

On this 10th day of November, 1992, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Jeffrey L. Swartz to me known to be the identical person named in and who executed the within and foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

*Janis C. Schulte*  
Notary Public in and for the  
State of Iowa



Copy mailed to  
filing attorney

NOV 12 1992

Recorded: 001111  
Page 77



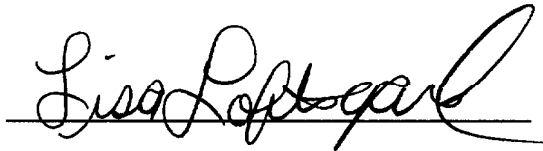
CERTIFICATE OF SERVICE

The undersigned hereby certifies, under penalty of perjury, that a copy of the document to which this certificate is attached was mailed via the United State mail with postage fully paid to the parties or the attorney of record shown below on this 10th day of November, 1992.

Wesley B. Huisinga  
The Center, Box 47  
Cedar Rapids, IA 52407

Attorney Michael C. Dunbar  
P.O. Box 1377  
Waterloo, IA 50704

Thomas G. McCuskey, Trustee  
401 Old Marion Road N.E.  
Cedar Rapids, IA 52402

A handwritten signature in black ink, appearing to read "Lisa Loftsgaard", is written over a horizontal line.